

SERVICES AGREEMENT

AGREEMENT # *[INSERT]*

BETWEEN

[INSERT NAME OF PURCHASER]

- AND -

[INSERT NAME OF SUPPLIER]

DRAFTING NOTES: ALL INPUT FIELDS HAVE BEEN FORMATTED IN ITALICS, BOLD AND HIGHLIGHTED. AFTER INSERTING THE RELEVANT INFORMATION, CHANGE THE FORMATTING TO ALIGN WITH THE SURROUNDING TEXT.

REMOVE ALL INSTRUCTIONS AND ENSURE REFERENCE TO OTHER SECTIONS ARE ACCURATE BEFORE ISSUING.

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SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of *[Insert date]*, between *[Insert legal name of Purchaser]*, with an office at *[Insert address]* (the “Purchaser”) and *[Insert legal name of supplier]* with an office at *[Insert address]* (the “Supplier”).

WHEREAS the Purchaser issued a request for proposals (“RFP”) dated *[Insert date]* for the supply of the Services, and the Supplier submitted a proposal dated *[Insert date]* offering to provide the Services for the Purchaser;

AND WHEREAS upon the completion of the evaluation process pursuant to the RFP, the Supplier was identified by the Purchaser as the preferred proponent pursuant to the RFP;

AND WHEREAS the Supplier and the Purchaser were able to agree on the terms and conditions of this Agreement;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

Article 1 Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms have the meanings indicated below:

- (a) “**Business Day**” or “**Business Days**” means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario) or as otherwise agreed to by the parties in writing.
- (b) “**Days**” means calendar days.
- (c) “**Deliverables**” means all services and work to be provided or performed by the Supplier, under the Agreement, and includes everything that is necessary to be supplied, done, or delivered by the Supplier.
- (d) “**Effective Date**” means the date that this Agreement is made, as first shown above.
- (e) “**Event of Force Majeure**” means any cause beyond the reasonable control of a party to this Agreement, including any act of God, outbreak, or epidemic of any kind, communicable and virulent disease, strike, flood, fire, embargo, boycott, act of terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental order, unavoidable accident, or shortage of labour or raw materials.
- (f) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (g) “**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown

corporations, courts, bodies, boards, tribunals, or dispute settlement panels or other law, rule, or regulation-making organizations or entities having or purporting to have jurisdiction on behalf of any nation, province, territory, state, or other geographic or political subdivision thereof; or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power, and includes the MOHLTC and Health Canada.

- (h) “**Indemnitees**” means the Purchaser and its officers, directors, agents, employees, or physicians.
- (i) “**Intellectual Property Rights**” includes any proprietary rights provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work law; or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, or the expression or use of same; or any applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing;
- (j) “**Personal Information**” means recorded information about an identifiable individual or that may identify an individual (including PHI), but does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
- (k) “**PHI**” means personal health information as defined in the *Personal Health Information Protection Act, 2004* (Ontario).
- (l) “**Privacy Office**” means the privacy office of the Purchaser.
- (m) “**Purchase Price**” means the price set out in Section 4.1 (Purchase Price).
- (n) “**Purchasing Organization**” means the organization that conducted the RFP process on behalf of the Purchaser.
- (o) “**Services**” means the services described in the Agreement and the Services and Prices Schedule.
- (p) “**Supplier Materials**” means the materials and information possessed by the Supplier prior to the commencement of the Supplier’s delivery of the Services, or acquired by the Supplier during the performance of the Services, except to the extent that such materials and information: (i) were developed or acquired (whether alone or jointly with others) specifically and exclusively for the Purchaser in connection with the Services; or (ii) were provided to the Supplier by the Purchaser, whether directly or indirectly.
- (q) “**Supplier’s Personnel**” means the Supplier’s employees, agents, representatives, and subcontractors who are listed in the Personnel Schedule.
- (r) “**Supplier Project Manager**” means the manager designated in accordance with Section 2.1 (Supplier Project Manager).

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- (s) “**Term**” means the effective period of the Agreement as set out in Section 6.1 (Term).

1.2 Schedules

The following Schedules are attached to and form an integral part of this Agreement:

- (a) Supplier’s Proposal Schedule
- (b) Personnel Schedule
- (c) Services and Prices Schedule
- (d) Information Practices Schedule

[This list may require alteration or may be augmented to reflect the RFP process.]

1.3 Order of Precedence

In the event of any conflict or inconsistency in the Agreement, the following is the order of precedence of documents comprising this Agreement:

- (a) Article 1 to Article 7 of this Agreement;
- (b) the Schedules annexed to this Agreement, except for the Supplier’s Proposal Schedule; and
- (c) the Supplier’s Proposal Schedule.

1.4 Rules of Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- (b) Words in the Agreement shall bear their natural meaning.
- (c) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (d) In construing the Agreement, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

Article 2 Supplier Management

2.1 General

The Supplier agrees to provide the Services in accordance with the requirements of the Agreement. The Supplier shall be responsible to the Purchaser for the acts and omissions of the Supplier's Personnel.

2.2 Supplier Project Manager

[Optional – if removing, remove references to the Supplier Project Manager throughout the document]

The Supplier shall promptly designate a Supplier Project Manager (subject to the prior approval of the Purchaser) who shall have the required skills and capabilities to adequately perform the role, and shall be fully authorized to make decisions and otherwise deal with the Purchaser in an effective and timely manner in respect of all matters under the Agreement. The Supplier Project Manager shall:

- (a) be responsible for co-coordinating the provision of the Services with the Purchaser;
- (b) ensure that the Supplier's obligations are completed in an efficient and timely manner; and
- (c) be readily available to the Purchaser by telephone and electronic communication during hours mutually agreed upon in writing regarding this Agreement, including, without limitation, responding to requests, queries, and complaints from the Purchaser.

2.3 Personnel

The Services shall be provided by the Supplier's Personnel, who shall function under the direction and control of the Supplier's Project Manager. The Supplier shall ensure that the Supplier's Personnel:

- (a) only perform activities in relation to the Services that are specifically assigned to them in the Personnel Schedule or as otherwise agreed by the parties in writing; and
- (b) have the professional designations and credentials required to provide the Services.

The Supplier shall not substitute alternates for any Supplier's Personnel without the prior consent of the Purchaser, which consent shall not be unreasonably withheld.

2.4 Changes to Schedules

The Purchaser shall be entitled to make changes to the schedules at any time provided that:

- (a) any such change shall be set out in writing and delivered to the Supplier; and

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- (b) where any such change results in an increase or decrease in the cost or time required for the delivery of the Services or performance of any requirement of this Agreement, an equitable adjustment shall be made to the Purchase Price or to the delivery date, or to both, provided that such adjustment is agreed to by the parties in writing.

Article 3 Services

3.1 General

The Services to be performed by the Supplier under this Agreement shall be performed by the Supplier in a professional manner.

3.2 Regular Hours

All Services shall be performed during regular hours or hours mutually agreed upon in writing. Overtime hours, pre-approved in writing by the Purchaser, shall be billed as set out in the Services and Prices Schedule.

3.3 Additional Services

Services not described in the Agreement shall be performed only upon the Purchaser's written authorization.

3.4 Purchaser Assistance

[Optional – if Services are on-site]

The Purchaser agrees to:

- (a) keep the equipment areas free of materials extraneous to said work and to remove any stock, fixtures, or partitions needed to facilitate the Services;
- (b) remove all obstructions to provide such clearances, as required, if the Services are in an area with less than the minimum clearances recommended for servicing; and
- (c) extend to the Supplier's Personnel any facilities at the Purchaser's premises that are necessary for the completion of the Services.

3.5 Finalization of Services

- (a) If any part of the Services provided are not acceptable in the Purchaser's sole discretion, the Purchaser shall provide notice to the Supplier, which notice shall explain the deficiency(ies) in the Services.
- (b) Upon receiving such notice, the Supplier shall take immediate corrective action and remedy the deficiency(ies) within 10 Days.

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- (c) Where the Supplier's attempt to correct such deficiency(ies) is unsuccessful, in the Purchaser's sole discretion, the Purchaser may:
- (i) provide notice to the Supplier in accordance with 3.5(a) and give the Supplier the opportunity to remedy the deficiency or deficiencies pursuant to 3.5(b); or
 - (ii) terminate the Agreement in accordance with the provisions set forth in Article 6 (Term and Termination).

3.6 Reports

At the request of the Purchaser, the Supplier shall deliver to the Purchaser operational progress reports throughout the Term and a final report, all such reports to be in a mutually agreed upon format. Such reports, which shall be considered to form an integral part of the Services, may include, but are not limited to, the following:

[Choose one or all of the following reports, or create a list of the reports that are needed.]

- ***Daily/Weekly/Monthly Progress/Status Report***
- ***Daily/Weekly/Monthly Cost/Budget Report***
- ***Daily/Weekly/Monthly Personnel Report]***

3.7 Ownership of Deliverables

[This section 3.7 is optional and depends on the Services being contracted for.]

3.7.1 General

- (a) Except in respect of Supplier Materials (the licensing of which is set out in Section 3.7.1(b)), all Intellectual Property Rights in all Deliverables shall be and hereby are assigned to the Purchaser and the Supplier shall have no Intellectual Property Rights in such Deliverables. At the request and expense of the Purchaser, the Supplier shall do all acts necessary and sign all documentation necessary in order to assign to the Purchaser all such Intellectual Property Rights and to enable the Purchaser to register patents, copyrights, trade-marks, mask works, industrial designs and such other protections for the Deliverables as the Purchaser deems advisable anywhere in the world.
- (b) All Intellectual Property Rights in all Supplier Materials shall be retained by the Supplier subject to a grant by the Supplier to the Purchaser of an irrevocable, non-exclusive, worldwide, royalty-free license to use any Supplier Materials that are incorporated into the Deliverables to the extent necessary for Purchaser to use or access the Deliverables, whether for the purposes contemplated hereby or for such other purposes as are reasonable given the nature of the Deliverables.
- (c) The Supplier shall not infringe on any Intellectual Property Rights of any third party in performing the Services.

3.7.2 Moral Rights

The Supplier waives any and all moral rights in the Deliverables and shall obtain a waiver of moral rights from any author or creator of any such Deliverable(s). Such waiver of moral rights shall be delivered to the Purchaser, which agrees that in the event the Deliverables are modified, they shall not be attributable to the Supplier without the prior written consent of the Supplier.

3.7.3 Delivery

The Supplier shall deliver the Deliverables to the Purchaser upon the termination or expiry of this Agreement, or earlier upon the Purchaser's request or as contemplated by any Schedule hereto.

3.8 Application of Purchaser's Rules to Supplier's Personnel

All policies and procedures applicable to the employees of the Purchaser regarding their conduct in connection with the business and affairs of the Purchaser shall, insofar as the same shall be required by the Purchaser, be applicable to the Supplier and the Supplier's Personnel while on the Purchaser's premises. It is the responsibility of the Supplier's Personnel to familiarize themselves with all such policies and procedures, which the Purchaser shall provide to the Supplier prior to, or at the time of execution of the Agreement.

In the event that any of the Supplier's Personnel fails or refuses to abide by such policies and procedures, Supplier shall ensure that such person no longer performs any Services for the Purchaser, and such person may be removed from or not admitted to the Purchaser's premises. The Purchaser shall have no liability in connection with the foregoing.

If requested by the Purchaser, the Supplier shall, based on the Purchaser's internal hiring policies, provide a criminal background or security check of the Supplier's Personnel. The Purchaser may disallow admittance to any of the Supplier's Personnel to the Purchaser's premises where such person does not meet the Purchaser's security requirements.

3.9 Workers' Compensation

The Supplier shall make all payments required under the *Workplace Safety and Insurance Act* (Ontario), and under similar legislation in other jurisdictions, and shall indemnify and hold harmless the Indemnitees from any failure to comply. The Supplier shall provide the Purchaser with a certificate that the Supplier is in good standing under the relevant workers' compensation legislation.

3.10 Workplace Safety

The Supplier shall:

- (a) maintain a safe workplace or work site in accordance with safe work practices and housekeeping;

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- (b) comply with the *Occupational Health and Safety Act* (Ontario) and all of its regulations pertaining to the type of work being performed;
- (c) have actual knowledge of, and comply with the Purchaser's safety policies and appropriate safe work procedures;
- (d) provide the necessary protective equipment, devices, or related safety item(s) as required by the *Occupational Health and Safety Act* (Ontario) and all of its regulations, as well as the Purchaser's safety policies, and ensure that such equipment, devices, and items are used in the performance of the requirements of the Agreement;
- (e) if requested, provide the Purchaser with a copy of the Supplier's written health and safety policy as required by the *Occupational Health and Safety Act* (Ontario); and
- (f) where applicable, provide product performance information relating to anti-microbial effectiveness, to be documented for the review and approval of the Purchaser and the Purchaser's infection control units.

Article 4 Prices and Payment

4.1 Purchase Price

Subject to any adjustment pursuant to Section 0 (Changes to Schedules) the Purchase Price for the Services shall be the sum of \$***[Insert]***.

4.2 Invoicing

The Supplier shall submit invoices to the Purchaser for payment in accordance with Section 4.1 (Purchase Price). No additional or contrary term or condition, which may be contained in the Supplier's invoice, shall have any application to this Agreement. Invoices shall reference this Agreement number and shall contain a brief, point form narrative relating to the amounts set out in it.

The Purchaser's payment term shall be net ***[Insert]*** Days, unless, within that period, the Purchaser, acting reasonably, gives notice to the Supplier that the Services are not in accordance with the terms hereof in some material respect. ***[Specify: 30 Days or 60 Days or as applicable.]***

4.3 Taxes

As the Purchase Price is exclusive of all harmonized and local sales taxes, if any, each shall be clearly set out on the Supplier's invoice and paid by the Purchaser unless it provides evidence of exemption therefrom.

4.4 Other Costs and Expenses

The Purchaser shall not be responsible for any costs or expenses of the Supplier relating to this Agreement that are not set out at Section 4.1, including, without limitation, in respect of accommodation or travel, unless expressly agreed to by the Purchaser in writing.

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Notwithstanding any agreement by the Purchaser to additional costs or expenses, all expenses that are to be reimbursed or paid by the Purchaser must be in accordance with the Purchaser's rules with respect to travel, meal and hospitality expenses, as established under the Broader Public Sector Expenses Directive. For greater certainty, meals, hospitality and incidental expenses will not be reimbursed by the Purchaser.

Article 5 Representations, Warranties, Indemnities

5.1 Supplier's Representations and Warranties

[Use and add as applicable]

The Supplier represents and warrants to the Purchaser and acknowledges that the Purchaser is relying thereon, as follows:

- (a) if applicable, the Services shall have received all required approvals of, and shall comply with all applicable standards and requirements referred to in this Agreement, or as may be required by law;
- (b) the Supplier shall provide documented evidence that the Services meet the applicable standards or that the Supplier has the applicable licenses, if any, referred to in this Section 5.1 (Supplier's Representations and Warranties) or by law;
- (c) if applicable, on completion of the Services, there shall be no liens outstanding in regard to such Services;
- (d) the Supplier has full power and legal right to enter into the Agreement and to fulfill all of its obligations hereunder;
- (e) the Supplier is not aware of any proceeding in progress or pending or threatened against, related to or affecting the Supplier and which might be expected to have a materially adverse effect on the Services or impact the Supplier's ability to meet its obligations under this Agreement;
- (f) to the best of its knowledge, neither the Purchaser, the Purchasing Organization nor any of their respective personnel or affiliated organizations has any significant influence in the Supplier or any of its associates or affiliates, or will receive any direct or indirect proceeds from the Agreement other than as expressly stated in the Agreement; and
- (g) all representations, warranties, confirmations, and statements set out in the Supplier's proposal/quotation and in this Agreement shall remain accurate in their entirety during the Term.

5.2 Nature of Warranties

Except as expressly set forth herein, there are no other warranties or conditions, express or implied, including any warranty or condition of merchantability or fitness for a particular purpose, in respect of the Services.

5.3 Indemnity

Subject to the limitation of liability set out in Section 5.4, the Supplier shall indemnify, defend (at its expense) and hold the Indemnitees harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis), whether or not well-founded, (“Losses”) brought against or suffered by the Indemnitees arising out of or related to:

- (a) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;
- (b) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property;
- (c) any breach or alleged breach by the Supplier of any of its obligations, warranties, or representations in the Agreement; or
- (d) allegations that the operation or use of any Deliverables, or any part thereof, infringes any third party’s copyright, trade secret, patent, or any other intellectual property right;

except to the extent that such Losses were not caused by the Supplier. The foregoing indemnity shall be conditional upon the Purchaser notifying the Supplier as soon as is reasonably practicable in the circumstances of any Losses in respect of which this indemnity may apply and of which the Purchaser has knowledge, and the Purchaser co-operating with the Supplier in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Supplier without the Purchaser’s prior written consent.

5.4 Limitation of Liability

5.4.1 Limitation of Liability

- (a) The limitation of liabilities in this Section shall not apply in respect of (i) any indemnities with respect to intellectual property, bodily injury or death; or (ii) damages arising from a breach of confidence or privacy.
- (b) In the event Supplier is liable to Purchaser in respect of any claim against Supplier whether based in contract, tort (including negligence), or otherwise, including breach by Supplier of any of its obligations under this Agreement (whether or not a fundamental breach), Purchaser’ damages shall be limited to payment of no more than:

[Revise the following per the nature of the Services]

- (i) in relation to harm to tangible personal property and real property caused by Supplier or its agents negligence, wilful or intentional acts the greater of (1) ***[\$[Insert]***, and (2) the total amount of fees paid by Purchaser under this Agreement during the immediately preceding ***[Insert]*** year period up to the point in time when actual and direct damages were incurred by Purchaser; or

- (ii) in relation to any other matter not otherwise excluded from this limitation on liability, the greater of (1) \$***[Insert]***, and (2) the total amount of fees paid by Purchaser under this Agreement during the immediately preceding ***[Insert]*** year period up to the point in time when actual and direct damages were incurred by Purchaser.
- (c) The parents, affiliates, subsidiaries, directors, officers, employees, agents, representatives, subcontractors and suppliers of a party shall be deemed to be included as part of such party for purposes of this Section 5.4.1.

5.4.2 Indirect Damages

Other than in connection with Section 5.3(a), Section 5.3(d) and Section 7.8, the Supplier shall assume no liability for special, indirect, incidental or consequential damages arising in connection with this Agreement, even if advised of the possibility thereof, including, but not limited to, lost profits, lost business revenue, failure to realize expected savings, other commercial or economic losses of any kind, or for any claim against Purchaser. ***[Consider whether the type of damages to be protected against in the particular procurement could be considered an ‘indirect’ damage. Since there is often some doubt in this area, it is highly advisable to describe expressly in Section 5.5 (Indemnity), above, what is intended to be covered. That way, it will be treated as ‘direct’ damages.]***

Article 6 Term and Termination

6.1 Term

This Agreement shall become effective on the Effective Date, and shall expire on ***[Insert date]*** unless it is terminated early in accordance with the provisions of the Agreement (the “**Term**”). The Term is subject to any and all rights of either party to terminate the Agreement pursuant to the terms of the Agreement, or otherwise available to either party at law or in equity.

6.2 Extension

[Optional – If the Services were acquired in a RFP process, the following option is only to be used if the RFP document allowed for such an extension.]

The Purchaser, in its sole discretion, may extend the Term for an additional period of ***[Insert the extension period]*** months by giving written notice to the Supplier prior to the commencement of the extension period upon the same terms and conditions.

6.3 Termination by Either Party

Either party may, without liability, cost or penalty, terminate the Agreement on written notice to the other where such other party neglects or fails to perform or observe any material term or obligation of the Agreement and such failure has not been cured within 30 Days of written notice being provided.

6.4 Termination by Purchaser

The Purchaser shall be entitled to terminate the Agreement, without liability, cost, or penalty:

- (a) on written notice to the Supplier where the Supplier: (i) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (ii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iii) becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business. Notwithstanding the foregoing, the Purchaser shall not be entitled to terminate this Agreement under this Section if the Supplier, or its creditors, or some other party makes suitable provisions for the performance of its obligations hereunder;
- (b) on **[Insert] [Days]** written notice to the Supplier, following the occurrence of any material change in the Purchaser's requirements which results from regulatory or funding changes or recommendations issued by any Governmental Authority;
- (c) on written notice to the Supplier if the Supplier breaches in any material respect any of its obligations or covenants hereunder with respect to confidential information or privacy;
- (d) in the event of a material breach of any of the provisions of Section 0, Section 3.1, or Section 5.1 (including no conflict of interest), or any service standard referred in the Services and Pricing Schedule, if such breach is not cured within **90** Days of Purchaser giving written notice of such material breach to the Supplier; and
- (e) as per any provision of the Agreement that provides for early termination.

6.5 Obligations in the Event of Termination or Expiration of the Agreement

6.5.1 Supplier's Obligations

In the event that the Purchaser gives notice of termination under this Agreement or this Agreement expires, or this Agreement is otherwise terminated, the Supplier shall, at the request of the Purchaser do any or any combination of the following:

- (a) disclose to the Purchaser the current state of the Services completed to the effective date of termination (including all Deliverables that have been produced) by the Supplier as at the effective date of termination;
- (b) prepare a written report on the Services completed to the effective date of termination (including all Deliverables that have been produced) and deliver that report in a professional manner acceptable to the Purchaser within 10 days from the effective date of termination;

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- (c) provide to the Purchaser all Deliverables produced during the Term, and return to the Purchaser all information and materials provided to the Supplier by the Purchaser; and
- (d) assist with the transition/handover of the Services, whether to the Purchaser or to a third party, as applicable and upon the request of the Purchaser.

6.5.2 Purchaser's Obligations

Where the Purchaser terminates the Agreement, the Purchaser shall be responsible only for:

- (a) payment of the Services provided to the date of termination; and
- (b) all expenditures reasonably incurred in connection with preparing and providing the report prepared pursuant to Subsection 6.5.1 (b);

provided that all such payments shall be no greater than the Purchase Price, and shall be subject to the invoicing and other requirements of 3.10(a).

6.6 No Limitation of Remedies

Any termination of the Agreement shall not in any respect limit any of either party's rights or remedies either in law or in equity or relieve either party of any obligation incurred prior to the effective date of such termination.

6.7 Survival

In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding confidentiality, privacy, Intellectual Property Rights, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

Article 7 General

7.1 Liability Insurance

[No Services should be delivered until the Purchaser is in receipt of a satisfactory certificate, as set out below or as per the insurance broker's instructions. The following are sample provisions only and may not be appropriate in all cases. As such, these provisions need to be customized for each specific procurement and the limitations of liabilities/amounts set out below ascertained from the appropriate sector insurance broker.]

7.1.1 Supplier's Insurance

The duration of each policy shall be from the Effective Date until termination of the Agreement. The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier

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would maintain including, but not limited to, the following comprehensive commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than ***[Insert amount]*** per occurrence, ***[Insert amount]*** aggregate. The policy shall include, but not be limited to, the following:

- (a) the Purchaser as an additional insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Agreement;
- (b) products and completed operations;
- (c) contractual liability coverage;
- (d) cross-liability clause;
- (e) 30 Day written notice of cancellation, termination, or material change; and
- (f) owned and non-owned automobile coverage with blanket contractual coverage for hired automobiles.

7.1.2 Proof of Insurance

On the Effective Date and upon the placement, renewal, amendment, or extension of any part of the insurance, the Supplier shall provide the Purchaser with confirmation of coverage and, if requested, a certificate of insurance certified by an authorized representative of the insurer.

7.1.3 Additional Insurance

It shall be the sole responsibility of the Supplier to determine what additional insurance coverage, if any, shall be necessary and advisable for its own protection and/or to fulfill its obligations under the Agreement. Any such additional insurance shall be provided and maintained by the Supplier at its own expense.

7.2 Compliance with Laws

The Supplier shall comply with all federal, provincial, and local laws, regulations, and orders in fulfilling its obligations under the Agreement.

7.3 Remedies Cumulative

The rights and remedies of the parties under this Agreement are cumulative, and are in addition to and not in substitution for any other rights or remedies provided in the Agreement, by law or in equity. Any single or partial exercise by a party of any right under this Agreement, or any failure to exercise or delay in exercising any such right, shall not be or be deemed to be a waiver of, or to prejudice any other rights or remedies to which such party may be entitled.

7.4 Force Majeure

7.4.1 General

Except as expressly provided otherwise in the Agreement, dates and times by which a party is required to render performance under this Agreement shall be postponed to the extent and for the period of time that such party is prevented from meeting such dates and times by an Event of Force Majeure.

7.4.2 Purchase of Services

The Purchaser shall not be obligated to purchase the Services in the event that the needs of the Purchaser change due to any Event of Force Majeure, provided that the Purchaser promptly advises the Supplier where the Purchaser's needs change.

7.4.3 Notice

Where an Event of Force Majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party.

7.4.4 Performance

Such party must use reasonable commercial efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available.

7.4.5 Right to Terminate

In the event such inability to perform shall continue longer than ***[Insert]*** Days, the party which has received or which was entitled to receive notice pursuant to Section 7.4.3 (Notice) may terminate the Agreement by notice to the other party without further liability, expense, or cost of any kind.

7.5 Alternative Dispute Resolution

[Consider where ADR should exclude the possibility of litigation in all cases.]

7.5.1 General

Should any party default in respect of or contravene any portion of the Agreement, the parties agree to address the breach or dispute through Alternative Dispute Resolution. Before pursuing this Alternative Dispute Resolution, the parties shall have first escalated the dispute to the highest level of management within their respective organization and given at least ***[Insert]*** Days for such highest level of management to resolve the matter prior to incurring costs under this Section 7.5 (Alternative Dispute Resolution). Subject to the provisions of the Agreement, each party shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.

The arbitration procedures in this Section 7.5 (Alternative Dispute Resolution) shall not (i) apply to claims by third parties, or (ii) prevent either party from seeking an injunction or other equitable relief from a court in order to protect its intellectual property rights or its confidential information.

7.5.2 Election

If elected by a party, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the applicable Ontario arbitration legislation and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

7.5.3 Arbitration Site

The arbitration shall be held at ***[Insert city name]*** or at such other site mutually determined by the parties. Where the parties are unable to agree upon an arbitrator who is willing to serve within 45 Days of receipt of a demand to arbitrate by a party, then the ***[Insert]*** shall appoint an arbitrator willing to serve.

7.5.4 Procedure

Subject to the provisions of this Section 7.6 (Notices), the arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each party and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement.

7.5.5 Decision

The arbitrator shall not award either party punitive damages and the parties shall be deemed to have waived any right to such damages. The decision shall be in writing and judgment upon the award by the arbitrator may be entered into any court having jurisdiction. Prompt handling and disposal of the issue shall be important. Accordingly, the arbitrator is instructed to assume adequate managerial initiative and control over discovery and other aspects of the proceeding to schedule discovery and other activities for substantially continuous work, thereby expediting the arbitration as much as is deemed reasonable to the arbitrator, but in all events, to effect a final award within 45 Days of the arbitrator's selection or appointment and within 10 Days of the close of evidence.

7.5.6 Confidential Information

The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The arbitrator shall have the right, but not the obligation, to order that the losing party pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate a losing party or does not order the losing party to pay all such fees, the arbitrator shall so state, and the fees shall be split equally between the parties.

7.5.7 Termination Clauses not Subject

Notwithstanding the above, the termination clause provisions as set out in Sections 6.3 (Termination by Either Party) and 6.4 (Termination by Purchaser) shall not be subject to Alternative Dispute Resolution.

7.6 Notices

7.6.1 General

Subject to the provisions of the Information Practices Schedule, any notice, demand, request, consent, approval, or acceptance required or contemplated to be given or made hereunder (a “**notice**”), shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person and left with a receptionist or other responsible employee of the relevant party at the applicable address set forth on the first page hereof ;
- (b) sent by prepaid registered post addressed to the address set forth on the first page hereof; or
- (c) sent by any electronic means of sending messages, including facsimile transmission, which produces a paper record (in this Section an “**Electronic Transmission**”) during normal business hours on a Business Day charges prepaid **[and confirmed by prepaid registered post]**
 - (i) in the case of the Supplier, to facsimile number ***[Insert facsimile number and email address]***;
 - (ii) in the case of the Purchaser, to facsimile number ***[Insert facsimile number and email address]***;

Each notice sent in accordance with this Section shall be deemed to have been received:

- (d) on the day it was delivered or on the first Business Day thereafter if it was delivered after 5:00 p.m. or if the day on which it was delivered was not a Business Day;
- (e) on the fifth (5th) mail delivery day following the day on which it was posted; or
- (f) on the first Business Day after it was sent by Electronic Transmission.

7.6.2 Changes

Either party may change its address for notice by giving notice to the other party (as provided in this Section 7.6 (Notices). A party must always provide an address for notice to which notices can be personally delivered.

7.7 Publicity

Each party agrees that the terms of this Agreement are confidential. Neither party shall in any of its advertising or otherwise indicate that it has supplied or purchased or may in the future supply Services under this Agreement without the express prior written consent of the other party. No acquisition or use of the Services by the Purchaser shall be construed as an endorsement or approval of such Services.

7.8 Confidentiality

7.8.1 General

The parties agree that any information concerning the business or affairs of the other party or its directors, officers, agents, employees, clients, patients and physicians, as applicable, about which the other party becomes aware of in the course of the Supplier supplying the Services shall:

- (a) be treated as confidential;
- (b) not be disclosed to any third party or to the Supplier's Personnel or the Purchaser's staff except as may be required in order for the Supplier or the Purchaser, as the case may be, to meet its obligations under this Agreement; and
- (c) not be used for any purpose other than that contemplated by this Agreement and for the benefit of the other party.

The parties agree that any combination of information which includes such information shall be treated as confidential even if individual parts thereof are not confidential. The parties shall use all reasonable efforts to keep such information confidential, using a standard of care no less than the degree of care that the recipient would be reasonably expected to employ for its own confidential information. The parties shall ensure that all recipients of the said information, including the Supplier's Personnel or the Purchaser's staff, assume obligations identical in principle with those which the parties assume under this Section.

In the event a party is required by any applicable law to make disclosure of any such information, the party required to make disclosure shall consult with the other party in advance to the extent reasonably practicable as to the contents and timing of such disclosure in order for the other party to have the opportunity to prevent the disclosure of such confidential information or to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, the disclosing party shall produce only that portion of the confidential information that it is ordered to disclose. In the event that any confidential information is disclosed pursuant to the foregoing, it shall not lose its confidential status through such disclosure.

7.8.2 Exceptions

While neither party shall disclose any confidential information of the other, it shall not constitute a breach of the obligations hereunder if such confidential information was:

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- (a) already in the public domain or becomes known within the public domain from no breach of such party;
- (b) already known to such party at the time of disclosure;
- (c) independently developed by the party without reference to or use of the information;
- (d) lawfully received by the party from a third party; or
- (e) made public with the prior consent in writing of the other party.

7.8.3 FIPPA Records and Compliance

The Supplier and the Purchaser acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep Records secure;
- (b) to provide Records to the Purchaser within 7 Days of being directed to do so by the Purchaser for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the Purchaser determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Services;
- (d) not to directly or indirectly use, collect, disclose, or destroy any Personal Information for any purposes that are not authorized by the Purchaser;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures, and procedures to do so;
- (f) to restrict access to Personal Information to those of its directors, officers, governors, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing the Services and who have been specifically authorized by the Purchaser to have such access for the purpose of providing the Services;
- (g) to implement other specific security measures that in the reasonable opinion of the Purchaser would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally;
- (h) that any confidential information supplied to the Purchaser may be disclosed by the Purchaser where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall prevail over any inconsistent provisions in the Agreement.

7.8.4 Information Practices

The Supplier, for the purposes of this Agreement, as an agent of the Purchaser, pursuant to Section 2 of the *Personal Health Information Protection Act, 2004* (Ontario), has reviewed and agrees to abide by the Purchaser's Information Practices set out in the Information Practices Schedule to the extent they are applicable to it.

7.9 Property of the Purchaser

All schematics, drawings, blueprints, specifications, and other information and documentation, which may be provided by the Purchaser to the Supplier in connection with this Agreement, shall remain the property of the Purchaser.

7.10 Entire Agreement

This Agreement, together with the RFP, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether written or oral and whether between the Supplier and the Purchaser or between the Supplier and the Purchasing Organization. There are no conditions, covenants, agreements, representations, warranties, or other provisions, expressed or implied, collateral, statutory, or otherwise, relating to the subject matter hereof except as provided herein.

[Depending on the Purchasing Organization's relationship with the Purchaser and if the Purchasing Organization has been involved, use the following sentence, if applicable.]

The Supplier acknowledges that Purchasing Organization has no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Purchaser with respect to this Agreement.

7.11 Time of Essence

Time shall be of the essence of this Agreement.

7.12 Assignment and Enurement

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and their respective successors and permitted assigns. Neither party may assign or subcontract any of its rights or obligations hereunder without the prior written consent of the other party. Any act in derogation of the foregoing shall be null and void. For the purposes of this Agreement, the transfer or issuance of shares by the Supplier of more than fifty per cent (50%) of the voting securities of the Supplier to any entity or entities other than to an affiliate (as such term is defined in the Business Corporations Act (Ontario)) or the shareholder or shareholders of the Supplier as of the date of this Agreement, whether or not such transfer or issuance of voting securities takes place in one or more transactions, shall, for the purposes of this Agreement, be deemed to be an assignment of this Agreement requiring the consent of the

Purchaser, unless such transfer or issuance of shares is made pursuant to an initial public offering of common shares under the Securities Act (Ontario).

7.13 Amendment and Waivers

This Agreement may not be amended or modified in any respect except by written instrument signed by both parties, provided that the Purchaser may make changes to the attached schedules as set forth in Section 0 (Changes to Schedules). No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.

7.14 Independent Parties

This Agreement does not create a relationship of principal and agent or employer and employee between the Purchaser and the Supplier and under no circumstance shall either party be considered the agent of the other. The Supplier shall have no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Purchaser.

7.15 Currency

Unless otherwise indicated, all dollar amounts expressed in the Agreement are in Canadian currency.

7.16 Legislation

Where a statute is referred to in the Agreement, such statute shall be interpreted to include all of its related regulations, as may be amended from time to time.

7.17 Governing Laws

This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario, except that such Province's conflict of laws rules shall not apply to this Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario and the courts competent to hear any appeal.

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The parties hereby execute the Agreement, which is made as of the Effective Date.

(Name of Purchaser)

(Name of Supplier)

(Authorized Signature)

(Authorized Signature)

Name (Print)
Title (Print)
I have the authority to bind the
Purchaser.

Name (Print)
Title (Print)
I have the authority to bind the Supplier.

(Date)

(Date)

Supplier's Proposal Schedule

Personnel Schedule

Services and Prices Schedule

Information Practices Schedule

Collection, Use, and Disclosure of Personal Health Information

1. The Supplier agrees to receive PHI from the Purchaser in accordance with the requirements of s. 17 or, in the case of health information network providers, s. 10(4) of the *Personal Health Information Protection Act, 2004* (Ontario) (PHIPA) and its related regulations, as part of the Supplier's provision of services to and on behalf of the Purchaser, and not on the Supplier's behalf or for the Supplier's own purposes.
2. For greater specificity pursuant to the Supplier's obligations under Section 1 of this Information Practices Schedule, in the event that the Supplier is a health information network provider under PHIPA, the Supplier will provide the Purchaser with a Privacy Impact Assessment and a Threat Risk Assessment with respect to the services to be provided to the Purchaser pursuant to the Agreement.
3. The Supplier will only use as much PHI as is reasonably necessary to perform its obligations under the Agreement and will make PHI available only to those employees who require access in order to satisfy those obligations.
4. The Supplier will only use and disclose any PHI it receives from the Purchaser as is permitted or required under the Agreement or the laws of Canada and/or the province of Ontario.
5. The Supplier will ensure that any of its agents or subcontractors to whom the Supplier provides the Purchaser PHI has agreed in writing to the same restrictions and conditions that apply to the Supplier with respect to PHI.
6. The Supplier will not disclose PHI, or any information, to any affiliated or unaffiliated third party without the prior written consent of the Purchaser.
7. The Supplier will maintain a log of access and disclosure of PHI by the Supplier and the Supplier's Personnel and make such log available to the Purchaser as and when requested.

Practices to Protect Personal Health Information

8. The Supplier will employ appropriate safeguards to prevent theft, loss, and unauthorized access, copying, modification, use, disclosure, or disposal of PHI. ***[If information management services are part of the Agreement use the following: Without limiting the generality of the foregoing, the Supplier will take reasonable steps to ensure that all PHI from the Purchaser is securely segregated from any information owned by the Supplier or third parties, including access barriers, physical segregation, and password authorization.]***

[Agreement Health Services Template]

9. The Supplier will maintain privacy policies in accordance with Canadian and Ontario laws and these policies will be made available for inspection on request.
10. The Supplier will educate its employees on privacy laws and policies and take reasonable steps to ensure employee compliance through staff training, confidentiality agreements, and employee sanctions.
11. The Supplier will ensure that all employees who have access to PHI from the Purchaser have undergone screening that includes reference checks.
12. The Supplier will ensure that its employees who are fired, resign, or no longer require access to PHI from the Purchaser return all PHI to the Purchaser and can, thereafter, no longer access applications, hardware, software, network, and facilities belonging to either the Supplier or the Purchaser.
13. The Supplier will revoke any user's access to PHI if security is breached and on the Purchaser's reasonable request.
14. At the termination of the Agreement, the Supplier will return or destroy all PHI received from, created, or received by the Supplier on behalf of the Purchaser that the Supplier maintains custody of in any form and will retain no copies of PHI thereafter. The Supplier will certify to the Purchaser that all such PHI has been returned or destroyed, as the case may be. If such return or destruction of PHI is not feasible, the Supplier will notify the Purchaser of this fact, extend the protections of the Agreement to all PHI in its custody and will cease all further uses and disclosures.

Notification of and Communication with the Purchaser

15. The Supplier will provide the Purchaser with the name of a contact person at the Supplier's organization responsible for the Supplier's privacy compliance and notify the Purchaser within 24 hours of any changes in the identity of the responsible person.
16. The Supplier will provide notice to the Purchaser's Privacy Office if the nature of the Supplier's business and the services being provided to the Purchaser require that the Purchaser PHI must be transmitted or access be provided to any of the Supplier's Personnel or to any facility situated outside of Ontario. When providing notice, please specify where outside of Ontario the PHI will be transmitted or from where it will be accessed. The Purchaser's Privacy Office can be notified as follows:

[Insert Contact Information as appropriate]

17. The Supplier will report to the Purchaser's Privacy Office at the Supplier's first reasonable opportunity, but in any event no more than 48 hours after the Supplier becomes aware of any use, disclosure (including being legally compelled), theft, or unauthorized access of PHI by the Supplier or any of the Supplier's agents or subcontractors to whom the Supplier provide the Purchaser PHI.

18. The Supplier will refer anyone trying to access, correct, or complain about their PHI to the Purchaser's Privacy Office within 48 hours of receiving the complaint or request for access or correction. The Supplier will cooperate with and assist the Purchaser in the management of any such request for access or correction or complaint.
19. The Supplier will, upon request, make PHI available to the Purchaser for amendment and incorporate any amendments into the Supplier's records of PHI. During the Term, the Supplier may never deny the Purchaser access to its patients' PHI.
20. The Purchaser reserves the right to: inspect any equipment used or records maintained by the Supplier in connection with the provision of goods or services; question the Supplier's Personnel regarding their handling of PHI; and otherwise audit and electronically verify compliance with these practices.

Additional Purchaser Rights

21. Notwithstanding anything else contained in the Agreement, the Supplier authorizes, acknowledges, and accepts termination without notice of the Agreement by the Purchaser in the event that the Purchaser determines the Supplier has violated any of these practices.
22. All of the privacy terms provisions in this Information Practices Schedule survive the termination of the Agreement.
23. The Purchaser reserves the right to go to court to obtain an order stopping or preventing the Supplier from violating the privacy terms in this Information Practices Schedule. The Supplier acknowledges that any breach of these practices will result in the Purchaser suffering irreparable harm.